

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

ISMAEL MARTINEZ-SOLANO,
Defendant.

No. CR-06-021-FVS

ORDER DENYING MOTION FOR
REDUCTION

THIS MATTER comes before the Court based upon Ismael Martinez-Solano's motion for a reduction of his sentence. He is representing himself.

BACKGROUND

Judgment was entered on July 21, 2001. Ismael Martinez-Solano did not appeal. (His codefendant did.) On May 14, 2007, Mr. Martinez-Solano filed a motion requesting a two-level downward departure on the ground that, as an illegal alien, he will not be eligible for privileges that otherwise would be available to him while he is imprisoned.

RULING

Mr. Martinez-Solano's motion is denied. Although he characterizes his claim as an equal protection claim, it is not. It is a nonconstitutional sentencing issue that could have been presented to the Court of Appeals had he chosen to appeal his sentence. By

1 failing to appeal, he waived the issue. See *United States v.*
2 *Schlesinger*, 49 F.3d 483, 485 (9th Cir. 1995) ("nonconstitutional
3 sentencing errors that have not been raised on direct appeal have been
4 waived and generally may not be reviewed by way of 28 U.S.C. § 2255").

5 **IT IS HEREBY ORDERED:**

6 Ismael Martinez-Solano's motion for a reduction of his sentence
7 (**Ct. Rec. 114**) is denied.

8 **IT IS SO ORDERED.** The District Court Executive is hereby
9 directed to enter this order and furnish copies to Mr. Martinez-Solano
10 and to counsel for the government.

11 **DATED** this 22nd day of May, 2007.

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13 s/ Fred Van Sickle
Fred Van Sickle
14 United States District Judge
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